

1 well, he simply denied all throughout the period. There were
2 times when we admitted that there were -- there had been
3 problems, on May 24, 1987, and on. You know. Then you,
4 you're free to make -- to argue the accuracy of that state-
5 ment.

6 MS. WOOLF: Sure. That will go to the weight.

7 JUDGE MILLER: Do you follow -- are you following
8 me?

9 MS. WOOLF: Yes, I am.

10 JUDGE MILLER: Proceed.

11 MS. WOOLF: If we can go back up to line 12 on that
12 page. This is the same thing we have been talking about
13 earlier. "TMC's customers continue to complain and in fact
14 began to cancel their service with TMC."

15 JUDGE MILLER: I need specifics on who cancelled
16 service -- I'm going to order any damages in this case. I, I
17 think I -- I think the interlocutory pleadings that I, that I
18 put out made that pretty clear, because I'm not going to, I'm
19 not going to base it on, on "many" customers. I just can't do
20 it. We'll -- so, with that observation, you don't -- I mean,
21 you don't need to repeat this word about -- this position. I
22 understand your position and I sustained your position.

23 MS. WOOLF: Right. There's, there's no foundation
24 in the record for that.

25 JUDGE MILLER: That -- there isn't -- right.

1 Because there, there was a foundation to the extent that I
2 have told Mr. Waysdorf and he's named me three people. And if
3 we're going to get down to -- but if we're getting -- going to
4 get down to why people even -- people on the telephone logs
5 cancelled their service, I think we've got to be specific.

6 MR. WAYSDORF: That would apply, then, to the, to
7 the -- starting with the word "and," but certainly the trouble
8 logs will go toward establishing the -- TMC's customers con-
9 tinued to complain.

10 JUDGE MILLER: Well, I'll, I'll, I'll interpret the
11 telephone logs -- I -- once it's in evidence --

12 MR. WAYSDORF: I understand, Your Honor, but I'm
13 trying to --

14 JUDGE MILLER: I -- okay.

15 MR. WAYSDORF: I'm trying to understand if -- what,
16 if anything, is being stricken here out of 12 and 13.

17 JUDGE MILLER: Let me say this. I am not going to
18 make any finding about service cancellation based on that
19 sentence because I, I -- it's, it's, it's so vague and indefi-
20 nite that I cannot, I cannot make a positive finding. Now, I
21 haven't struck anything in the sentence. I've just, I've just
22 observed that my rulings are going to be -- my, my rulings are
23 going to be consistent with what I, what I previously said
24 about the -- customers.

25 MR. WAYSDORF: Okay, Your Honor.

1 MS. WOOLF: I'll, I'll just say one other thing,
2 which is that to the extent that there is no foundation for
3 this sort of statement about canc-- customer cancellations,
4 then I believe customer complaints become irrelevant.

5 MR. WAYSORF: Your Honor, I can't agree with that.

6 JUDGE MILLER: Well, that's something that we,
7 we'll, we'll allow you people to argue it out. I'm not, I'm
8 not worried about it. What I'm worried about is getting
9 factual, factual details to support conclusions and statements
10 in the record, and that's the only thing I'm worried about
11 today. I'll take up my other problems when I get to them.
12 Ms. Woolf?

13 MS. WOOLF: Top of page 20.

14 JUDGE MILLER: Before, before you get to the top of
15 -- starting on the bottom of page 19 with the words "and
16 when..."

17 MS. WOOLF: That's -- this --

18 JUDGE MILLER: "...my continued complaints began to
19 include warnings." What, what exhibits and what, what am I to
20 look at to discern these warnings, Mr. Waysdorf?

21 MR. WAYSORF: Your Honor, these were oral warnings.
22 They're, I believe, even reflected in the notes of Pacific
23 Bell's account team itself. The -- they were oral warnings.
24 They were, they were contained in meetings --

25 JUDGE MILLER: Okay. And --

1 MR. WAYSDORF: -- and telephone calls --

2 JUDGE MILLER: Is what you're talking about is, is
3 the meetings that have been accounted here. I'll overrule the
4 objection. That's what you're talking?

5 MR. WAYSDORF: Yes. As well as, as I was about to
6 say, telephone calls reflected on the telephone log. But, but
7 --

8 JUDGE MILLER: But, but we do not have written
9 warnings, is that accurate?

10 MR. WAYSDORF: I do not believe that I am aware of
11 any written warnings.

12 JUDGE MILLER: Okay. Now, I'm going to ask you a
13 second question which, which deals with some testimony that
14 he's given so far. Is there in this record any written demand
15 for direct trunking service on the part of Mr. Bader?

16 MR. WAYSDORF: I do not believe so.

17 JUDGE MILLER: Proceed, Ms. Woolf.

18 (Off the record.)

19 (On the record.)

20 JUDGE MILLER: Proceed.

21 MS. WOOLF: Page 20, the paragraph beginning on line
22 6 contains hearsay, both for what Mr. Bader and Pacific Bell
23 said at that meeting.

24 JUDGE MILLER: Well, what -- his, his isn't, his
25 isn't hearsay, is it?

1 MS. WOOLF: Well, it's an out-of-court statement.

2 MR. WAYSDORF: Well, but --

3 JUDGE MILLER: Just a second, Mr. -- I have no
4 problems with the first, first line 6 through 8. Now, I'm --
5 I will hear from you, Ms. Woolf, on, on lines 9 through 13.
6 "PB's representatives denied, however, there was any possibil-
7 ity that the access tandem..." Do you, do you object to that?

8 MS. WOOLF: Yes.

9 JUDGE MILLER: All right.

10 MS. WOOLF: Yes. Again on the basis of hearsay. It
11 doesn't say who it was. I have no way of testing the reliabi-
12 lity.

13 JUDGE MILLER: It's not the kind of hearsay that I
14 ought to be even writing an ID on.

15 MS. WOOLF: Absolutely not.

16 JUDGE MILLER: That's what you -- that's your objec-
17 tion.

18 MS. WOOLF: Correct.

19 JUDGE MILLER: It isn't -- Mr. Waysdorf?

20 MR. WAYSDORF: Your Honor, my understanding that the
21 representatives identified at that meeting were his account
22 team, Wheatley and Duer, and that those people have been
23 called for cross-examination, so that they're -- the -- this,
24 this statement can be tested.

25 JUDGE MILLER: By PB's representatives you are

1 representing, you are representing to me that they are
2 Wheatley and Duer?

3 MR. WAYSDORF: That's my understanding, Your Honor.

4 JUDGE MILLER: I'll overrule the objection on, on
5 that basis. If it turns out that Wheatley and Duer didn't,
6 didn't cite design specifications of the switch, et cetera, et
7 cetera, then I will, I will make my finding accordingly.

8 MS. WOOLF: Okay. I object to the characterization
9 in line -- well, line 14, the initial sentence is speculation
10 or argument, not factual. Certainly he has no idea of Pacific
11 Bell's confidence. And then the following sentence, I cer-
12 tainly object to the characterization of the "serious" -- the
13 term "serious" and "blacked out completely" as not being --
14 there's no foundation for that.

15 MR. WAYSDORF: Foundation's in the next sentence.
16 "It went dark for 107 minutes." That's -- if that's not what
17 he means by "blacked out," I'm sure he can explain.

18 JUDGE MILLER: I'll, I'll overrule the objection
19 with a full understanding, Ms. Woolf, that, that -- does not
20 necessarily agree that, that there was any injury to TMC or
21 that it was dark totally between those hours. The -- in other
22 words, you know the people of the 107 minutes.

23 MS. WOOLF: Right. Or --

24 JUDGE MILLER: But, but this is, this is his con-
25 tention. And, as far as I'm concerned, it's one of the areas

1 where you people differ and I, I'll allow the testimony in.

2 MS. WOOLF: Okay. Next. This is probably similar
3 to what we just talked about, on page 22.

4 JUDGE MILLER: On page 22?

5 MS. WOOLF: Yes. Again, the characterization of, of
6 the switch failure as a "complete failure of the switch." I
7 obviously --

8 JUDGE MILLER: I'm sorry. Where -- oh.

9 MS. WOOLF: Line 2.

10 JUDGE MILLER: Line 2.

11 MS. WOOLF: I object to that characterization simi-
12 lar to the, to the one that came before.

13 JUDGE MILLER: I'll overrule your objection with,
14 with the understanding that you -- your position of what
15 actually occurred wasn't a "complete failure of the switch."

16 MS. WOOLF: Okay. Same page, 22, lines 11 through
17 22, contains a lot of hearsay about unspecified people at
18 Pacific Bell.

19 JUDGE MILLER: Well, wait a minute. Wait a minute.
20 Wait a minute. You're starting on line 11 with the words "PB,
21 however..."?

22 MS. WOOLF: Yes.

23 JUDGE MILLER: And you're, and you're going down
24 through where?

25 MS. WOOLF: It's the -- probably line 22.

1 JUDGE MILLER: The word "1987"?

2 MS. WOOLF: Yes.

3 JUDGE MILLER: All right. Now, what's the basis of
4 your objection?

5 MS. WOOLF: It contains hearsay, unspecified people
6 at Pacific Bell evidently -- because of the words-- word "con-
7 tinued to try to convince me." There was obviously more than
8 one contact. "PB continued to take this position even
9 throughout this litigation..." These sentences are filled
10 with hearsay with no details given.

11 JUDGE MILLER: Mr. Waysdorf?

12 MR. WAYSDORF: The -- I'm going to have to break it
13 down because there are some very different sentences. The
14 sentence beginning in the middle of line 11 --

15 JUDGE MILLER: Right.

16 MR. WAYSDORF: -- through the middle of line 14
17 again continues to be the account team, which are the only
18 people that -- in addition to several people that these meet-
19 ings that were -- and several additional people that -- who,
20 who were at these meetings that were held and are reflected in
21 the notes of Pac Bell's own people. These continue to be
22 Wheatley and Duer who are the people who con-- conducted these
23 -- the account team that conducted these meetings with Mr.
24 Bader. The --

25 JUDGE MILLER: Now, let me ask you a question about

1 that. You tell, tell me that there's somebody else at these
2 meetings besides Wheatley and Duer?

3 MR. WAYSDORF: No. I, I, I may be misstating that.
4 I'm just trying not to --

5 JUDGE MILLER: What --

6 MR. WAYSDORF: -- overstate. I know Wheatley and
7 Duer were there. I just want to be s-- be very careful be-
8 cause, as I recall, there were additional people at subsequent
9 meetings.

10 JUDGE MILLER: Well, let me, let me tell you what,
11 what --

12 MR. WAYSDORF: I think how --

13 JUDGE MILLER: -- where, where, where I think we're
14 going to have the problem.

15 MR. WAYSDORF: I think Helga Post was also --

16 JUDGE MILLER: What?

17 MR. WAYSDORF: -- at these. I think Helga Post was
18 also at these meetings.

19 JUDGE MILLER: We-- because here, here's what one of
20 the problems that I'm going to probably have to do some diffe-
21 rentiating when I write findings in the case, Mr. Waysdorf, is
22 that -- my memory could be wrong, but I think a little later
23 Mr. Bader says: "Well, I finally got tired of going to the
24 account team, which was who I've been doing business with all
25 along, and I decided I was going to go over their head. And

1 that's the first time that I ever went over their head. This
2 is the first time I really talked to a -- to the upper echelon
3 or the middle echelon or wherever we are in, in this thing."

4 And I'm not so sure that that contention on his part
5 jibes with his memory of who attended certain meetings.

6 MR. WAYSDORF: Well, for the purpose of determining
7 whether this is admissible hearsay, I believe that the rele-
8 vant question is whether there are people from Pac Bell who
9 were present at the meeting who can verify or deny --

10 JUDGE MILLER: Well, if, if your representation is
11 that on that first sentence it was Wheatley and Duer, the
12 objection for that first sentence is overruled. Now --

13 MR. WAYSDORF: The, the, the next sentence, I, I
14 think is two different things here. The first up to the
15 second comma, the -- that is reflected in, again, the meetings
16 -- well, I guess -- I, I guess it's, it's --

17 JUDGE MILLER: I'll overrule that. I'll overrule
18 the objection to that one on, on the grounds that this is a --
19 this is his, this is his recollection of what, what events
20 took place and how they took place.

21 MR. WAYSDORF: And, then -- I mean, that's through
22 the end of that sentence. The next sentence: "I was informed
23 by PB..." This is again -- this was told to him by Duer and
24 Wheatley that this is what they were doing, and it's also --

25 JUDGE MILLER: Okay.

1 MR. WAYSDORF: -- reflected in --

2 JUDGE MILLER: If you -- if it's Duer --

3 MR. WAYSDORF: -- in our --

4 JUDGE MILLER: -- and Wheatley that, if it's Duer
5 and Wheatley that, that you're talking about, I'll overrule
6 the objection.

7 MR. WAYSDORF: And it's also reflected in various
8 other documents as to what Pac Bell itself was doing at that
9 time. I believe that's it.

10 JUDGE MILLER: All right. I'll overrule, I'll
11 overrule the, the objection to that last sentence on the
12 grounds that the people that you, that you cross-examine or --
13 about the events will be (a) Duer or Wheatley or both.

14 MR. WAYSDORF: Your Honor, did I mention that appar-
15 ently Helga Post was at some of these meetings as well, who
16 was, who was identified and also called as a witness.

17 JUDGE MILLER: Then -- I know you, you've identified
18 her at the meetings and you, and you say -- and you -- and I
19 understand that --

20 MR. WAYSDORF: --

21 JUDGE MILLER: -- you're calling her as a witness,
22 but I have yet to hear you represent to me that Helga Post
23 continued to try to convince me that the switch was performed.

24 MR. WAYSDORF: I hear, Your Honor.

25 JUDGE MILLER: You under-- you understand what I'm

1 saying?

2 MR. WAYSDORF: Yes, I do.

3 JUDGE MILLER: And what -- and, and, and, and I
4 will, I will say to you if you believe that Helga Post made
5 representations to Mr. Bader, you know --

6 MR. WAYSDORF: I, I can't say that.

7 JUDGE MILLER: But -- I, I know. I'm, I'm just, I'm
8 just showing you what you'll need to do.

9 MR. WAYSDORF: In order to -- yes, I understand.

10 JUDGE MILLER: Proceed, Ms. Woolf.

11 MS. WOOLF: The, the next sentence, beginning line
12 22 on that same page, page 22, beginning apparently -- this is
13 just speculation as to what Pacific's motives or something
14 were and a characterization that it was insufficient. And
15 there's no -- it's just speculation.

16 MR. WAYSDORF: Well, it's based on documents that
17 were turned over at discovery as to what Pacific Bell actually
18 did and the actions they took to alleviate the problems they
19 were having on the 90T as far as traffic.

20 MS. WOOLF: Well, there's, there's no, there's no
21 foundation in the documents for -- I mean, factual contention
22 of moving IXC traffic up to 90T may well be correct and be
23 pr-- you know, contained in those documents, but the motive
24 attributed to Pacific Bell I think is complete speculation.

25 MR. WAYSDORF: I don't believe so. I believe that

1 Suzanne Galaway's deposition explained the reason why they --

2 JUDGE MILLER: I'll overrule. The objection is
3 overruled. Admittedly a conclusion, but I think a, a reason-
4 able conclusion, even for a layman. Might not be accurate,
5 but -- based on oth-- other testimony in this proceeding -- or
6 deposition, since they are not testimony yet. All right.
7 Next?

8 MS. WOOLF: Page 23.

9 JUDGE MILLER: Yep.

10 MS. WOOLF: Line 8. "PB also continued to deny..."
11 This is the same problem we've had before with the use of
12 those sorts of words that aren't -- there, there's no way I
13 can --

14 JUDGE MILLER: I under--

15 MS. WOOLF: -- make sure that --

16 JUDGE MILLER: I understand. Who, who was it that
17 continued to deny this?

18 MR. WAYS DORF: His, his contact was with Duer and
19 Wheatley, the account team that he dealt with throughout this
20 period.

21 JUDGE MILLER: And when you say "PB also continued
22 to deny," who are you talking -- you are talking about Duer
23 and Wheatley, right?

24 MR. WAYS DORF: Yes. Yes, Your Honor.

25 JUDGE MILLER: Okay. Okay. Overruled.

1 MS. WOOLF: The sentence beginning line 14. "It is
2 also my belief that from our customers' perception what call
3 blockage resulted in..." There, there's no foundation.

4 JUDGE MILLER: What, what, what are we talking about
5 there, Mr. -- what, you know, what gives you the right to
6 speak for the customers, Mr. Waysdorf?

7 MR. WAYSDORF: Your Honor, it's what they reported
8 to the service department and is reflected in the trouble
9 logs.

10 JUDGE MILLER: It's his interpretation of the trou-
11 ble log?

12 MR. WAYSDORF: Yes, Your Honor, as the company
13 president. And these were regular business documents prepared
14 in the course of, of the business, the course of conducting
15 the business.

16 JUDGE MILLER: All right. Let me tell you -- show
17 you that I don't have a -- the depth that I probably should
18 have for, for this particular sentence. How do you determine
19 whether a customer has been left high and dry? If I make a
20 call and there's no answer --

21 MR. WAYSDORF: It doesn't ring.

22 JUDGE MILLER: -- and, and then, and then I -- but,
23 but I'm, I'm, I'm a nasty guy, so I really dial again.

24 MR. WAYSDORF: That, that wouldn't be.

25 JUDGE MILLER: And this time there's an answer.

1 Have I been left high and dry?

2 MR. WAYSDORF: Your Honor, that would -- the calling
3 the, the second time does not mean you weren't left high and
4 dry the first time. If you're impatient and within, you know,
5 three seconds --

6 JUDGE MILLER: But he -- the, the, the, the point is
7 I might have dialed wrong the first time.

8 MR. WAYSDORF: Well, it's a matter of not being
9 connected at all, not being -- it's a matter of not receiving
10 a, a ring or a busy signal at all.

11 JUDGE MILLER: All right. I will overrule the
12 objection, Ms. Woolf, on the grounds that his belief is estab-
13 lished by the trouble reports that we'll be talking about a
14 little later. And if it's shown that those trouble reports
15 don't sustain his belief or -- well, that's, that's as far as
16 I'm going. You can certainly bring that out. Proceed.

17 MS. WOOLF: Page 24, bottom of the page, line 22.
18 "Moreover, PB at first failed to inform me." Hearsay.

19 MR. WAYSDORF: Your Honor, he's reflecting what he
20 was or was not told by the --

21 JUDGE MILLER: Well --

22 MR. WAYSDORF: -- the account -- Pacific Bell ac-
23 count team.

24 JUDGE MILLER: The, the objection is overruled. Let
25 me say that it's a difficult sentence to deal with, Ms. Woolf,

1 because what he is saying is that he -- nobody ever -- nobody
2 told him. Now, he, he -- if somebody did tell him, it could
3 be brought out. But as far as he's concerned -- I mean, he's
4 under oath and that's what he said: nobody's ever told me
5 this. Overruled. Okay. Next?

6 MS. WOOLF: Following page. I think you'd have to
7 start at line 6, during the course of this tour, although it's
8 really the second sentence I'm objecting to, stating that some
9 hearsay as to what somebody told him --

10 JUDGE MILLER: I'm, I'm sorry. Where are we at, Ms.
11 Woolf?

12 MS. WOOLF: The sentence begins on line 8. "I was
13 told that it was a control panel..." You sort of need to go
14 back to the prior sentence just to make --

15 JUDGE MILLER: Yes.

16 MS. WOOLF: -- it make sense.

17 JUDGE MILLER: Thought that started on 6.

18 MS. WOOLF: Right. And then it's really the re-
19 mainder of the paragraph. It contains a lot of hearsay, which
20 I have no way to test.

21 JUDGE MILLER: Are you prepared to tell me, Mr.
22 Waysdorf, who told him that PB would not control any less than
23 25 percent of a carrier's traffic because anything less than
24 25 percent controlled would have no effect on the call-
25 handling capabilities of the 90T? Can you tell me who did

1 that?

2 MR. WAYS DORF: No, because we can't identify who the
3 Pacific Bell employee --

4 JUDGE MILLER: The objection --

5 MR. WAYS DORF: -- did the --

6 JUDGE MILLER: -- is sustained.

7 MR. WAYS DORF: -- talking.

8 MS. WOOLF: And, and would that objection also be
9 sustained to the statements in lines 8 through 11?

10 JUDGE MILLER: The, the -- 8.

11 MS. WOOLF: We have no way of --

12 JUDGE MILLER: I, I'll -- starting with line 6
13 through the li-- through line 15. And let me go one step
14 further. I -- whether Mr. Bader was surprised or not in line
15 4 won't help me write a decision. Proceed, Ms. Woolf.

16 MS. WOOLF: The bottom of page 25, beginning in line
17 22 and continuing all the way onto page 26, about what the
18 account team did or did not inform in regarding feature group
19 deconfigurations. I believe that's all irrelevant since the
20 tariff is a public document and takes precedent over any mis--
21 any representations made by a regulated --

22 JUDGE MILLER: I'll overrule that. I, I'll be frank
23 with you, Ms. Woolf. I hope, not just Pac Bell, but Southwest
24 Bell, Atla-- Bell Atlantic and everybody's account teams are
25 making representations in accord with the tariff. Because if

1 they aren't, you, you're skirting on the, you're skirting on
2 the edge of justness and reasonableness. But with that obser-
3 vation -- I, I, I want to know this, Ms. Woolf. When our --
4 when TMC was first provided with equal access from PB in April
5 1986, who was the account team? I mean, I don't think we're
6 going to -- is it Duer and Wheat-- Wheatley at this, at this
7 juncture?

8 MR. WAYS DORF: No, Your Honor. I think at that
9 point it was a different account team.

10 JUDGE MILLER: It was Korba and --

11 MR. WAYS DORF: Yeah, Broadhead.

12 JUDGE MILLER: I'll, I'll sustain the objection to
13 what the account team informed them on the grounds that you
14 won't be able to cross-examine that, that particular sentence,
15 Ms. Woolf. You don't have Korba or Broadhead.

16 Now, I'm not, I'm not sustaining any objection to
17 whether he was not informed. You see that last -- next sen-
18 tence? That's a, that's a negative and this is what he says:
19 I was never, I was never told this.

20 Okay. Proceed.

21 MS. WOOLF: Page 26.

22 JUDGE MILLER: Yes?

23 MS. WOOLF: Line 7, the discussion that follows --

24 JUDGE MILLER: Well, before we get to line 7, I want
25 to, I want to talk about lines 1 through 3. Is it your

1 position that there was no -- Mr. Bader's position that, that
2 there were no employees ever mentioned the access tariff to,
3 to, to --

4 MR. WAYS DORF: Yes, Your Honor. That is correct.

5 JUDGE MILLER: Now, does, does, does TMC Long
6 Distance have a tariff expert?

7 MR. WAYS DORF: No, Your Honor, I don't believe so,
8 that they have anyone employed by them directly, no. No, I
9 don't believe it's -- that it's common for a small --

10 JUDGE MILLER: I, I, I'm not, I'm not asking whether
11 it was common, I was just --

12 MR. WAYS DORF: I said --

13 JUDGE MILLER: -- asking you whether they --

14 MR. WAYS DORF: -- TMC does not.

15 JUDGE MILLER: -- have one or not.

16 MR. WAYS DORF: TMC does not.

17 JUDGE MILLER: Proceed, Ms. Woolf. You can get to
18 your objection now.

19 MS. WOOLF: Okay. Line 7, that sentence. I under-
20 stand that he's testifying this is his belief, but I believe
21 it's specula-- it's, it's speculative as to what duty we had
22 with respect to the MFJ and the FCC.

23 JUDGE MILLER: That, that is -- that, that's his
24 belief. That's been his belief. He believes that you people
25 should have told him. You people say look, you -- why don't

1 you read the tariff. That's what we provide service under.
2 And that, and that you're in conflict on that point. And I'll
3 overrule the objection.

4 MS. WOOLF: The bottom of the page, line 22.
5 "However, when I asked my PB account team..." It's not clear
6 to me the time period involved, so I don't know whether it's
7 relevant or not and I don't know what hearsay he's talking
8 about in terms of what the account team told him.

9 MR. WAYSORF: This I believe is Duer and Wheatley.

10 JUDGE MILLER: You think it's Duer and Wheatley?

11 MR. WAYSORF: Yes, Your Honor.

12 JUDGE MILLER: I'm going to accept your representa-
13 tion that it was Duer and Wheatley and --

14 MR. WAYSORF: We --

15 JUDGE MILLER: -- overrule your objection.

16 MR. WAYSORF: We also have Mr. Clark's testimony.

17 JUDGE MILLER: Mr. Clark?

18 MR. WAYSORF: Yeah. Wasn't -- I'm sorry. I'm
19 getting confused. Yes.

20 JUDGE MILLER: Exhibit 5?

21 MR. WAYSORF: Yes. It was al-- it's, it's, it's
22 another -- he --

23 JUDGE MILLER: Was he a member of the account team?

24 MR. WAYSORF: No, no. He was, he was president --
25 present -- he was a member of TM-- he's a officer and director

1 of TMC who was present at one of the meetings.

2 JUDGE MILLER: I know. But, but the sentence
3 reads --

4 MR. WAYS DORF: Okay.

5 JUDGE MILLER: -- "I asked my PB account team whe-
6 ther I could be provided with the same configuration as..."

7 MR. WAYS DORF: I, I understand, Your Honor. No.
8 The -- there's not --

9 JUDGE MILLER: "I was told that AT&T had FGC access
10 and only AT&T could get FGC."

11 MR. WAYS DORF: Right. Your Honor, I just mentioned
12 that as corroboration, not as the people who were the ones
13 that informed him of that.

14 JUDGE MILLER: All right.

15 MR. WAYS DORF: You're right.

16 JUDGE MILLER: If, if, if during a meeting they
17 asked this question about FGC and they also asked a question
18 about FGD and Mr. Clark is, is in a position and has testified
19 in Exhibit 5 about those distinctions, why, we'll get to it.
20 Proceed.

21 MS. WOOLF: Page 27, line 17, stating that an exam-
22 ple of PB's attitude toward TMC's use of direct trunking is
23 the statement -- because this testimony is not now, as it
24 starts in that paragraph, dealing with 1987, they're then
25 referring back to something from 1986 to make some

1 conclusions. And I, I don't think that the Exhibit 11 is
2 relevant to that time period.

3 JUDGE MILLER: I'll overrule the objection.

4 MS. WOOLF: Okay. Line 23 --

5 JUDGE MILLER: Let me ask, let me ask another ques-
6 tion. Is there any difference in the cost of service between
7 the access tandem switch and direct trunking?

8 MS. WOOLF: In terms of what we charge customers?

9 JUDGE MILLER: Yeah.

10 MS. WOOLF: No difference.

11 JUDGE MILLER: And, and the tariff so, so reflects?

12 MS. WOOLF: Yes.

13 JUDGE MILLER: Okay. Okay. Proceed.

14 MS. WOOLF: Let me say during that time period.

15 JUDGE MILLER: During the time --

16 MS. WOOLF: Just recently there has been a change,
17 but --

18 JUDGE MILLER: Okay.

19 MS. WOOLF: -- during that time period there was --

20 JUDGE MILLER: No.

21 MS. WOOLF: -- no difference.

22 JUDGE MILLER: I, I'm talking about -- just so that
23 you, you and I are talking about the same time period, I'm
24 talking about 1985 to 1988.

25 MS. WOOLF: Yes.

1 JUDGE MILLER: I know you, you're talking about '87,
2 but I'm talking about '85 to '88.

3 MS. WOOLF: There was no difference --

4 JUDGE MILLER: Okay.

5 MS. WOOLF: -- in price. Page 27, line 23, I would
6 like -- "It is clear that direct trunking was not being of-
7 fered to TMC..." was -- is a conclusion. It's conclusory.

8 MR. WAYS DORF: This is his perception and impression
9 of what -- he is president of the company that was being told.

10 JUDGE MILLER: He -- the, the -- put a period after
11 "so" and I'll sustain the objection to "It is clear that
12 direct trunking was not being offered to TMC."

13 MS. WOOLF: Page 28, top of the page.

14 JUDGE MILLER: You know, what, what, what's going to
15 happen here is that no one is going to make the decision
16 whether it was clear that direct trunking was not being of-
17 fered to TMC. That's who's going to make the decision, I
18 guess. That's where the buck stops. Proceed.

19 MS. WOOLF: Page 28, lines 1 through 4. Hearsay.

20 MR. WAYS DORF: This is --

21 JUDGE MILLER: Who told -- no, I -- who told him,
22 first of all? Let's, let's get -- did -- do we -- do you
23 know?

24 MR. WAYS DORF: Wheatley and Duer.

25 JUDGE MILLER: Huh?

1 MR. WAYSDORF: Wheatley and Duer.

2 JUDGE MILLER: Okay. I, I got Wheatley written down
3 here, and Duer. That objection is overruled.

4 MS. WOOLF: The sentence beginning on line 10 of
5 page 28. I think it is argumentative. It contains
6 speculation.

7 JUDGE MILLER: Well, as a function?

8 MS. WOOLF: Yes. Mis-- the characterization at the
9 end of the sentence especially, about it being inexcusable.
10 Those are not factually -- facts that he can testify to.

11 MR. WAYSDORF: These are being presented as Mr.
12 Bader's perception, and certainly the, the account team itself
13 is presented to him as intending to work to foster his
14 service.

15 JUDGE MILLER: I'll sustain the objection. And I,
16 and I think -- I feel obligated to tell you, Mr. -- you better
17 tell your witness that, that I'm not particularly enamored
18 with the sentence beginning on page 4-- I mean, line 4 through
19 6. "Therefore, I believe that I was being told by PB that
20 direct trunking was not an available access configuration for
21 TMC." On the same basis that, that I have the same problem I
22 had before with, with what he's basing it on. But, but it,
23 but it's, it's in the record yet. Proceed, Ms. Woolf.

24 MS. WOOLF: Page 28, line 20. These materials range
25 from an undocumented statement from Ken Korba. Since that's

1 not -- has not been submitted as an exhibit in this, I don't
2 believe it's relevant, as well as jumping down to line 24 of
3 the affidavit of Mr. John Green. None of that has, has been
4 put in evidence here and I, I don't think it's relevant as to
5 what was done in the presi-- predesignation phase of this
6 proceeding.

7 MR. WAYS DORF: Your Honor, this is -- we have no
8 problem with striking that. The, the -- those are things that
9 were raised before by Pac Bell and we had no way of knowing
10 whether they were going to be raised again.

11 JUDGE MILLER: Well, we'll -- okay. Let's get rid
12 of the undocumented -- the sentence, "who is now retired PB"
13 and to the handwritten unsigned meeting note containing the
14 words direct trunking. Now, wait. Is that in evidence?
15 Handwritten unsigned meeting notes or, or, or are -- were they
16 Korba's notes or Green's notes?

17 MR. WAYS DORF: Those -- I, I believe those are --
18 actually, that parenthetical to "handwritten unsigned meeting
19 notes." I believe those are weekly notes, TMC Exhibit 15. I
20 guess it should have been referred to more specifically.
21 Yeah. Those are --

22 JUDGE MILLER: Well, I'll, I'll, I'll -- what I'm
23 going to do is I'm, I'm, I'm going to strike that whole, whole
24 thing, but, but you, you're going to call Wheatley as an
25 adverse witness?